PUBLIC PROSECUTOR
v.
AHMAD BIN KHASIRAN.

[Orig. Crim. Juris. (Paul Storr, J.) May 28, 1951]

[Muar — Criminal Case No. 1 of 1951]

Criminal Procedure Code s. 404 — Forfeiture of bail bond.

This was an application by the Deputy Public Prosecutor that the bond executed by the bailors of the accused should be forfeited under section 404 of the Criminal Procedure Code as the accused had failed to attend before the Court on the day fixed for his trial. It was argued on behalf of the bailors that the bond in this case was bad in law as no specific date for the producing of the accused before the Court was mentioned in the bond. Reliance was placed on Registrar's Circular No. 19 of 1948 issued by the Registrar, Federal Registry, Supreme Court, Kuala Lumpur.

Held, that although the bond in this case had been carelessly drawn up, the bond was good and as the conditions had not been fulfilled, it was forfeited.

Cases referred to :—

(1) *Behari Lal Chatterajee v. King Emperor* Ind. Dec. 21 Cal. 750.

(2) *Vithaldas Moolji v. Emperor* I.L.R. Bombay, 1932 p. 220.

CRIMINAL APPLICATION.

W. M. McCall (D.P.P.) for the applicant.

Inche Sardon for the respondent.

Paul Storr, J. : — This was an application by the Deputy Public Prosecutor that the bond executed by the bailors, Maskam bin Haji Abdul Rahman and Mesah binte Haji Yahaya alias Esah binte Nekmat, should be forfeited under section 404 of the Criminal Procedure Code, as the accused, Ahmad bin Khasiran, failed to attend before the Court of a Judge at Muar on the day fixed for his trial on a charge of criminal breach of trust under sections 408 and 409 of the Penal Code.

I find from the file that although the notice to the accused of the date of hearing could not be served on him owing to his absence from the Federation, the notice dated the 18th January, 1951, to the bailors of the date of hearing on 29th January, 1951, was served on the bailors on the 26th January, 1951. On the 29th January the accused was not present as it had been impossible to serve the notice to appear on him. The case was then adjourned to the 25th February, 1951, and the bailor Maskam bin Haji Abdul Rahman was present, the other bailor being absent. In February the case was called on before Mr. Justice Taylor and the bailors were notified that it was their duty to produce the accused. The case was then adjourned to the 18th March when the accused was again absent, but both the bailors were present and were informed that although they had been told to produce the accused, they had not done so.

Inche Sardon bin Jubir then applied for extension of time on behalf of the bailors as the bailor, Maskam bin Haji Abdul Rahman had already spent $1,000 in trying to locate the accused and to continue his efforts to produce him. The bailors were then notified that the Court would grant them time until the next Assize on 15th April in which to produce the accused, failing which they were warned that their bond would be forfeited.

This application came on the 15th April. In the ordinary way I would have granted the order immediately and called upon the bailors to show cause why the amount of their bond should not be paid. Inche Sardon bin Jubir submitted that the bond must be strictly construed and on a true construction the bond in this case was bad in law as no specific date for the producing of the accused before the Court was mentioned in the bond.

He referred to Registrar's Circular No. 19 of 1948 (issued by the Registrar, Federal Registry, Supreme Court, Kuala Lumpur) which (*inter alia*) reads :—

"It is, however, necessary, in any case where an accused person is to be committed for trial before the High Court and the Magistrate intends to allow him bail, that he should be committed to appear on a specific date, and not merely 'on a date of which he will be given notice'. This is necessary in order to preserve the liability of the bailors who would otherwise be discharged if the accused disappeared before notice of the date of hearing could be served upon him."

Inche Sardon stated that he was under the impression that there was a judgment supporting the statement by the Registrar, but that he had not been able to find it. He cited two Indian cases *Behari Lal Chatterjee v. King Emperor*(1) and *Vithaldas Moolji v. Emperor*(2), which were by no means on the point in question, but referred to cases where by reason of the fact that the Court of trial was altered without notice to the bailors, it was held that there had been no breach of the conditions of the bond.

In the present case I have been unable to find any authority for the proposition put forward by Inche Sardon or the Registrar in his Circular No. 19/48 and, although the bond in this case has been carelessly drawn up by allowing the words "in the matter of his conviction" to remain, I hold that the bond is good and as the conditions have not been fulfilled that it is forfeited. I therefore call upon the bailors to show cause why the penalty of $15,000 should not be paid.

Order to show cause made.